

### Judge Vaidik, cont.

1997 Indiana Judges Association Special Merit Award.

Judge Vaidik was appointed to the Court of Appeals in February 2000 by Governor Frank O'Bannon and was retained by election in 2002 and 2012. Because Judge Vaidik sees the Court of Appeals at the intersection of theoretical and practical law, she believes the Court should embody the highest degree of fairness and impartiality.

This view informs her passion for teaching, as she feels that Hoosiers, and all litigants, deserve the finest possible legal advocates on their behalf. Judge Vaidik also believes that legal writing must be distinguished by logical construction and clear, explanatory prose.

She is an adjunct professor at the Indiana University Maurer School of Law and won its 2011 Adjunct Professor of the Year Award. She has served as a visiting professor at the College of Law of England and Wales and taught as an adjunct professor at Valparaiso University Law School. She has taught at many law schools and for a number of organizations including the Indiana State Bar Association, the Indiana Legal Education Forum, and the Indiana Judicial Center.

Judge Vaidik has trained lawyers

involved in prosecuting Rwandan war crimes, Mexican lawyers prosecuting drug lords, and solicitor advocates seeking the rights of audience in the High Courts in Belfast, Northern Ireland. She is particularly proud of her long association with the National Institute of Trial Advocacy, which honored her with its 2007 Robert Keeton Faculty Award.

Despite her Court of Appeals caseload and her teaching, Judge Vaidik is also actively involved in a wide variety of community, legal, and judicial organizations. She served on the State of Indiana Children's Peak Performance Commission and has held many posts with the Indiana Judges Association and Indiana Judicial Center. She has been chairperson of the Judicial Education and Community Relations Committees of the Indiana Judicial Center and is a member of the American Bar Association, Indiana State Bar Association, and Sagamore Inns of Court.

She has received many other awards and honors including the 2004 Indiana State Bar Association's Women in Law Achievement Award, the 2007 Indiana Lawyer Distinguished Barrister Award, the 2003 Paragon of Justice Award from Valparaiso University Law School, and the Sagamore of the Wabash Award

from two Indiana governors.

Judge Vaidik and her husband are the proud parents of twin daughters, one a medical doctor and one a lawyer, and they have two grandsons, who can choose either profession.

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### Judge Najam, cont.

Courts," attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout. Judge Najam and his wife live in Bloomington.

### Selected Judicial Quotes

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

- *Alexander Hamilton, Federalist 78*

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- *Chief Justice John Marshall*

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- *Justice Oliver Wendell Holmes, Jr.*

## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE

SALEM HIGH SCHOOL

### Tallman v. State

#### CIVIL LAW ISSUE:

Whether the trial court erred in concluding that the Indiana Department of Natural Resources was immune from liability.

#### ORAL ARGUMENT:

Thursday, May 1, 2014  
1:30 p.m.

#### APPEAL FROM:

Martin Circuit Court  
The Honorable  
Lynne E. Ellis, Judge

### ATTORNEYS FOR THE PARTIES

#### For the Appellant

**David A. Smith** practices law in Bedford, IN. A native of Terre Haute, he attended Indiana State University, receiving his B.S. cum laude in Political Science and Economics in 1980. He then attended Indiana University School of Law-Indianapolis, receiving his J.D. in 1983.

Later that fall, he was admitted to practice before the Indiana Supreme Court and the Northern and Southern Districts of Indiana. He began practicing law in Bedford in 1985 as a deputy prosecutor and entered private practice in 1989. He has served as Lawrence County Attorney since 1993.

He represents private clients on a wide range of matters, from estate planning to criminal defense. He is admitted to practice law in Indiana and Florida.

#### For the Appellee

**Kyle Hunter** has been with the Office of the Indiana Attorney General since early 2012, where he has worked in both the Criminal and Civil Appeals Section.

Mr. Hunter was raised in West Lafayette, IN and graduated from Indiana University in 2007, with a BFA in Drawing and Painting. He earned his law degree from Indiana University Robert H. McKinney School of Law in 2012, where he was President of the J. Rueben Clark Law Society and a charter member of the Fashion, Art, and Design Law Society.

Mr. Hunter is a member of the Indiana State and Indianapolis Bar Associations, and an active member of the Indianapolis arts community. Mr. Hunter and his wife have three children.

### Synopsis: *Case No. 51A01-1305-PL-241*

This case involves property located in Martin County owned by Jerry Tredway. In December 2004, Tredway hired Richard Tallman to harvest timber on that property for sale. After Tallman harvested more trees than their contract had authorized, Tredway's daughter contacted the Indiana Department of Natural Resources.

Tallman claims that he got permission from Tredway's daughter to cut down an additional 45 trees, but Tredway's daughter denies that she gave that permission.

DNR investigated Tredway's allegations for a year and concluded that Tallman had, indeed, harvested more trees than had been authorized. DNR also concluded that Tallman did not share the profits of the harvest with

Tredway in accordance with the terms of their contract.

DNR obtained a warrant for Tallman's arrest, arrested him, and transported him to the Martin County Jail. DNR charged Tallman with theft, cutting timber not purchased, and failure to pay as agreed in violation of Indiana Code Sections 35-43-4-2, 25-36.5-1-4(b), and 25-36.5-1-4(a).

On the way to jail, Tallman complained about the handcuffs being too tight and reported that he was having pain and numbness in his hands and wrists. Even after the handcuffs were removed at the jail, Tallman continued to have pain and numbness in his hands and wrists.

Because of the injuries that Tallman alleges he sustained as a result of DNR's placement of handcuffs around his wrists, he sued DNR for

damages.

DNR moved for summary judgment, which the trial court granted. DNR is a government agency, and government agencies are generally immune from liability for many kinds of lawsuits.

On appeal, Tallman presents a single issue for our review, namely, whether the trial court erred when it concluded that DNR is immune from liability for Tallman's alleged injuries as a matter of law.



## Indiana 1891: Every docket tells a story

*Indiana Appellate Court Reports, Vols. 1, 2, and 3*, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

**Agriculture** was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

**Railroads** were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

*Vol. 1* also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic**

**relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

*Marshall et al v. Bell* involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

**Contract disputes** comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

*Orme v. Cooper*, from Floyd County, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

*Vols. 1, 2, and 3* include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

### FAST FACTS ABOUT THE COURT OF APPEALS

■ The Indiana General Assembly created a temporary appellate court in 1891 and a permanent Appeals Court in 1901. In 1971, voters approved a constitutional amendment making the Court of Appeals of Indiana a constitutional court.

■ The Court hears cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned.

■ Including judges serving senior terms, 135 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court’s first chief judge.

■ Because the Indiana Constitution provides “an absolute right to one appeal,” the Court of Appeals considers more than 2,000 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.

■ Eight women and three African Americans have served on the Court. Current Chief Judge Margret G. Robb is the Court’s first female chief judge.

■ The court decides most cases without holding oral argument. In 2012, for example, the court issued 2,143 majority opinions and heard 78 oral arguments.

■ The court hears and decides about twice as many criminal cases as civil cases each year.

■ The Court of Appeals affirmed trial court decisions in 80 percent of its cases in 2012. By case type, the affirmation rate was 86 percent of criminal cases; 88 percent of post-conviction relief petitions; and 64 percent of civil cases.

## Today’s Panel of Judges

*The Honorable  
Edward W. Najam, Jr.  
(Monroe County)*

**Edward W. Najam Jr.**, was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court’s First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, With Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired “Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate

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*The Honorable  
Nancy H. Vaidik  
(Porter County)*

**Nancy H. Vaidik** is a judge and a teacher with broad experience in both trial and appellate courts and in legal classrooms. She has an expertise in trial advocacy and appellate advocacy, with a strong background in the rules of evidence and legal mediation.

Judge Vaidik was selected by her colleagues as **chief judge** of the Court of Appeals for a three-year term beginning Jan. 1, 2014.

Judge Vaidik grew up in Portage, Indiana, and is a sixth-generation Hoosier who retains strong ties to her home town. She graduated with high distinction from Valparaiso University in 1977, with a double major in political science and psychology, and then studied at Valparaiso University Law School, where she earned her Juris Doctor in 1980.

Her early years as deputy and then chief deputy Porter County prosecutor provided the grounding for her judicial career. As an attorney, she tried over seventy-five jury trials and founded the Porter County Victims Assistance Unit, the Porter County Sexual Assault Recovery Project, the Domestic Violence Service, and the Valparaiso University Law School Mediation Clinic. She also served on the Porter County Community Corrections Board and led a countywide task force that spearheaded the eventual construction of a new county jail. After serving as a prosecutor, she went into private practice and specialized in domestic relations, probate, municipal law, and general litigation. She represented Caring Place, Inc., a shelter for battered women in Valparaiso.

From 1992 to 2000, she served as the judge of the Porter Superior Court. During her tenure on the trial court, Judge Vaidik was awarded a wide range of honors including the 1996 Indiana Domestic Violence Coalition Judge of the Year and the

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*The Honorable  
Melissa S. May  
(Vanderburgh County)*

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.